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ROYAL DECREE-LAW 24/2012, OF AUGUST 31, 2012, ON THE RESTRUCTURING AND RESOLUTION OF CREDIT INSTITUTIONS

CONTENTS

The Memorandum of Understanding on Financial-Sector Policy Conditionality ("**MoU**"), agreed to by Spain within the context of the EU's Eurogroup, set the conditions for access to the European Financial Stability Facility for recapitalization of the Spanish financial sector. In that context, the Official State Gazette of August 31, 2012, published Royal Decree-Law 24/2012, of August 31, 2012, on the restructuring and resolution of credit institutions ("**RDL 24/2012**"), which took effect on that same date.

By means of RDL 24/2012, the Government has adopted a first raft of difficult measures to reform the legal framework applicable to the restructuring and reorganization of Spanish credit institutions, which hitherto had been based essentially on Royal Decree-Law 9/2009, of June 26, 2009, on bank restructuring and reinforcement of capital of credit institutions, now repealed.

Given that, as stated, RDL 24/2012 repeals Royal Decree-Law 9/2009, which to date had been one of the provisions of reference in financial regulation, additional provision fourteen clarifies that references in law to Royal Decree-Law 9/2009 will be deemed made to RDL 24/2012.

This provision completely overhauls the powers and organization of the Fund for the Orderly Restructuring of the Banking Sector ("**FROB"**) and increases, on an executive basis, the powers of administrative intervention in credit institutions—or consolidable groups or subgroups of credit institutions—that need reinforcement or restructuring measures due to financial weakness or regulatory capital shortfalls. Besides revising certain provisions of another of the fundamental laws of the system in force in this area, i.e. Royal Decree-Law 2/2011, of February 18, 2011, on the reinforcement of the financial system, and adjusting certain provisions relating to the remuneration of managers and directors of credit institutions that benefit from public financial support, RDL 24/2012 also regulates the creation of the future Sociedad de Gestión de Activos Procedentes de la Reestructuración Bancaria, S.A., which has given rise to what in recent months has come to be known as the "bad bank" for the management and liquidation of "toxic" real estate assets accumulated by the Spanish banking sector. RDL 24/2012 is also used to transpose into Spanish law a European Directive on prospectuses and information obligations of issuers, and to amend Spanish legislation on the marketing to retail investors of complex instruments, which are two issues analyzed in our publication Updates Corporate 24-2012 (see publication).

1. RESTRUCTURING AND RESOLUTION [ARTICLES 1 TO 27]

1.1 Concept and types of action. Objectives and principles

RDL 24/2012 regulates the types of actions carried out on Spanish credit institutions that do not meet solvency, liquidity, organizational structure or internal control requirements or which are likely not to be able to meet them, classifying the institutions according to three types of action. Before delving into these situations of difficulty regarding the viability of the institutions, we should point out that from a conceptual standpoint, they are not in any way new; in fact, the idea of classes of institutions (obviously, leaving aside completely healthy institutions without viability risks other than normal, general market risk) was already implicit in the now repealed RDL 9/2009, which distinguished between "article 9 institutions" and "article 7 institutions," that is, institutions which might be viable with public aid and those which, due to their non-viability, would require special intervention or action.

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Nonetheless, RDL 24/2012 addresses the structure of different types of institutions with difficulties, already initiated by the MoU, and regulates the concept of "resolution" described below, which is new to Spanish legal practice.

Entering into the regulation, RDL 24/2012 establishes three types of action applicable to credit institutions according to what we could call their "viability status". These three types of action are:

(i) "Early measures", provided for credit institutions that fail to meet, or where there are objective elements to forecast that they will fail to meet, the applicable requirements of solvency, liquidity, organizational structure or internal control, but which will in future be able to meet the requirements by their own means, without prejudice to what is classed as "exceptional and limited" public financial support.

(ii) "Restructuring", provided for credit institutions that require public financial support to guarantee their viability, where that support will foreseeably be reimbursed or recovered, or institutions for which there is not an expectation of reimbursement or recovery but which cannot enter into resolution (described below) due to the very serious threat it would pose to the stability of the financial system (i.e. "systemic" institutions).

(iii) "Resolution", provided for credit institutions that are non-viable or are likely to be so in the near future, but where, for reasons of public interest and financial stability, their winding-up in insolvency proceedings must be avoided.

Interim provision one clarifies how current situations fit into the new terminology. In this regard, institutions that have received financial support from the FROB in accordance with Title II of Royal Decree-Law 9/2009 will be deemed to be in a restructuring process, while those undergoing a restructuring process with intervention by the FROB, pursuant to article 7 of Royal Decree-Law 9/2009, will be deemed to be in a resolution process.

With regard to the objectives, the regulation provided for in articles 2 and 3 RDL 24/2012 is somewhat confusing because, although article 2 makes the programmatical statement that the objective is to guarantee the continuity of the essential functions of the institution in order to ensure its long-term viability, which objective is repeated in article 3.1, the institution's viability is clearly not the aim of the "resolution" process. However, the objectives of avoiding harm to the stability of the financial system, preventing the contamination of the system as a whole, and of ensuring the most efficient use of public funds, are clear for all cases.

The principles underlying these processes are listed in RDL 24/2012 as follows:

(i) Application of the habitual rules on liability for the assumption of the losses of these institutions, according to the traditional corporate enterprise system governing Spanish business entities, that is:

  (a) primary liability of shareholders, equity unitholders or members, as appropriate;

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(b) secondary liability of subordinated creditors according to the hierarchy of claims established in insolvency legislation, with the qualifications established in this RDL 24/2012;

(c) equality of treatment of creditors with the same rank, unless established otherwise by RDL 24/2012.

RDL 24/2012 clarifies that the FROB is in no case included amongst the shareholders, equity unitholders, members or creditors of the institutions for the foregoing purpose.

(ii) The existence of a principle of balance with respect to an ordinary insolvency proceeding, in the sense that no creditor will bear losses exceeding those which it would have borne had the institution been wound up in an insolvency proceeding.

(iii) Replacement of directors in the event of resolution of an institution, and liability of the directors for damage and loss caused in proportion to their participation and the seriousness thereof, according to insolvency, commercial and criminal legislation.

RDL 24/2012 establishes that before adopting any restructuring or resolution measures and, very particularly, before applying the instruments provided, the FROB must determine the economic value of the institution or of its assets and liabilities. That valuation will be requested from independent experts, and RDL 24/2012 stipulates that the valuation procedure and methods will be those generally established by the FROB, through a decision of its Governing Committee and after receiving a report from the Bank of Spain, following commonly accepted methodologies. The valuation must take as a basis the institution's economic/financial forecasts, with the modifications and adjustments considered appropriate by the experts designated by the FROB, and it must have regard to the circumstances existing at the time of application of the instruments to be used and the need to preserve financial stability. In no case can the economic valuation take into account any public financial support received or to be received from the FROB in the context of a restructuring or resolution process.

We will now detail the regulation of the three situations provided for in RDL 24/2012 and mentioned above. For greater understanding of this newsletter and to avoid repetition, we consider it advisable to mention here that in all cases, a credit institution enters into any of the situations mentioned as soon as that situation is notified to the Bank of Spain.

Once the institution has made the notification, it normally has 15 days to send a "plan" to the Bank of Spain. As we will see, that plan will be an "action" plan, a "restructuring" plan or a "resolution" plan.

In all cases there is an obligation to draw up a plan that can be executed, normally, in a maximum of three months following its express approval by the Bank of Spain. RDL 24/2012 expressly grants the Bank of Spain authority to request modifications or additional measures, and also expressly regulates the approval of the plan according to the situation in question, as we will explain below.

The Bank of Spain is authorized to ask the managing body of any institution that has not voluntarily reported to the Bank to examine its situation and submit a plan, where the Bank considers that there are circumstances that make this advisable.

In addition, the institution must submit a quarterly report to the Bank of Spain informing on the degree of fulfillment of the measures in question and indicating when the situation comes to an end, either because the aims have been fulfilled or because the situation has deteriorated, in which case the institution will request inclusion in the following situation (restructuring and/or resolution).

1.2 Early measures

RDL 24/2012 refers to a later implementation by regulations of the objective indicators that enable identifying the existence of the situation requiring early measures.

The plan to be drawn up by an institution in this situation is called an "Action Plan" and must be expressly approved by the Bank of Spain, with a favorable report from the FROB if public support has been requested.

This Action Plan must have the following content:

(i) Specific objectives relating to the efficiency, profitability, leverage levels and liquidity of the institution, its consolidable group or subgroup.

(ii) Specific commitments relating to solvency.

(iii) Specific commitments for improving efficiency, rationalizing management and administration, improving corporate governance, reducing overhead costs and resizing productive capacity.

(iv) If the institution requests public financial support, the terms on which it will be provided (which must comply with those required for this type of aid) and the measures to be implemented to minimize the use of public funds.

The early measures which can be adopted by the Bank of Spain are:

(i) Require the managing body of the institution to call, or otherwise directly call if the managing body does not do so in the required time period, a shareholders' meeting or general assembly of the institution, and propose the agenda and the adoption of certain resolutions.

(ii) Require the removal and replacement of members of the managing bodies or of general managers or similar.

(iii) Require the preparation of a program for the renegotiation or restructuring of its debt with all or some of its creditors.

(iv) Adopt any of the measures established in the legislation in force on organization and discipline.

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(v) Where the foregoing measures are insufficient, decide to provisionally replace the institution's managing body.

(vi) Exceptionally, require recapitalization measures in which the time period for repurchase or redemption of the instruments convertible into shares does not exceed two years and provided that there are objective elements which make it reasonable to expect the institution to be in a position to purchase or redeem those convertible instruments on the terms agreed and, in all events, within the maximum time period of two years.

1.3 Restructuring

This situation applies to credit institutions that require public support to ensure their viability, which support is expected to be reimbursed or recovered, or to institutions for which reimbursement or recovery is not expected but which cannot enter into resolution because of the very serious threat it would pose to the stability of the financial system.

The level of severity of these harmful effects is not regulated; rather, it will be determined by the Bank of Spain according to criteria such as the volume of activities, services and transactions which the institution performs with respect to the financial system as a whole, its interconnection with the other institutions or the likelihood of its difficulties infecting the rest of the financial system.

The plan to be submitted by the institution is referred to as a "Restructuring Plan" and must be sent not only to the Bank of Spain but also to the FROB. In this case, the execution of the plan may exceed three months, with express authorization of the FROB. Although the authority to approve the Restructuring Plan continues to lie with the Bank of Spain, prior reports are required from the competent bodies of the autonomous communities where the savings banks and, as the case may be, credit cooperatives involved are domiciled.

The approval of the Restructuring Plan by the Bank of Spain will mean that the specific transactions used to implement the restructuring, including possible acquisitions of significant holdings and any bylaw amendments made as a consequence of those transactions, will not require any subsequent administrative authorization in the context of the legislation on credit institutions.

In turn, the FROB will submit to the Minister for Finance and Public Authorities and to the Minister for the Economy and Competitiveness an economic report detailing the financial impact of the restructuring plan presented on the funds provided out of the General State Budgets. Based on the reports issued by the Secretariat-General of Treasury and Financial Policy and by the Central Government Controller's Office, the Minister for Finance and Public Authorities may object to it, on a reasoned basis, within five business days following submission of that report.

The Restructuring Plan must have the same content as the Action Plan plus the following:

(i) A proposal on the restructuring instruments to be implemented, which may be public financial support and the transfer of assets or liabilities to an asset management company.

(ii) An analysis of the institution's situation which justifies its capacity to recover or reimburse the public financial support requested within the time period provided for each instrument or, otherwise, the serious threat to the stability of the financial system that would result from resolution of the institution.

(iii) The measures to be implemented to minimize the use of public funds and, in particular, the liability management exercises to be conducted relating to hybrid capital instruments and subordinated debt instruments, to ensure that the cost of restructuring the institution is shared appropriately, in keeping with the aims and principles established.

(iv) Reference to the time period for reimbursement or recovery of the financial support provided, if any.

At the proposal of the Bank of Spain, the FROB may include any early measures in the restructuring plans.

In order to monitor the fulfillment of the Restructuring Plan, the institution must send the quarterly report not only to the Bank of Spain but also to the FROB, and the Bank of Spain undertakes to notify the FROB, so that it can exercise its powers, of any decisions adopted in relation to that Plan including, where appropriate, the commencement of the resolution process.

Institutions that are in this situation must send the FROB any information it may require of them in relation to the institution or its consolidable group or subgroup and which may be necessary to prepare a potential resolution.

1.4 Resolution

This situation is established for credit institutions which are non-viable or which are likely to be so in the near future, but where, for reasons of public interest and financial stability, their winding-up in insolvency proceedings must be avoided.

This situation also applies to institutions which:

(i) fail to submit the restructuring plan within the time period established when required to do so by the Bank of Spain;

(ii) inform the Bank of Spain of the impossibility of finding a viable solution for their situation;

(iii) submit a plan which the Bank of Spain considers inadequate, or do not accept the amendments or additional measures required; or

(iv) fail to meet the execution deadline or to comply with any of the specific measures included in the restructuring plan, thereby jeopardizing the achievement of the aims of the restructuring.

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Institutions in any of the following circumstances and which are unlikely to be able to turn around their situation within a reasonable period of time using their own means, tapping the markets or through public financial support will be deemed non-viable, although the specific criteria has yet to be implemented by regulations:

(i) those which significantly breach or are reasonably likely to significantly breach the solvency requirements in the near future;

(ii) those whose liabilities exceed their assets or are reasonably likely to do so in the near future; or

(iii) those which cannot or are reasonably likely not to be able to meet their payment obligations in a timely manner in the near future.

In this case, where an institution is non-viable and restructuring is not appropriate, the Bank of Spain, *ex officio* or at the proposal of the FROB, will decide on the immediate commencement of the resolution process, informing the Minister for the Economy and Competitiveness and the FROB of the reasons for that decision. In addition, the Bank of Spain will, without delay, inform the institution and, where appropriate, the EU authority responsible for supervising the potentially affected group, and the European Banking Authority, of the decision taken.

After commencement of the resolution process, and provided that the FROB does not own a holding that confers control over the institution's managing body, the Bank of Spain will resolve to replace the institution's managing body.

Within the two months following the FROB's designation as manager or, in the event that it owns a holding that confers on it the control of the institution's managing body, following notification to the FROB of the commencement of the resolution process, the FROB will draw up a Resolution Plan for the institution or, as appropriate, will determine the suitability of initiating an insolvency proceeding, in this latter case immediately notifying the Bank of Spain, the Minister for the Economy and Competitiveness and the Credit Institution Deposit Guarantee Fund. At the reasoned request of the FROB, the Bank of Spain may extend that time period from two months to a maximum of six months.

The Resolution Plan must specify the following:

(i) The conditions justifying the commencement of the resolution process.

(ii) The resolution instruments already implemented or which the FROB intends to implement, and the powers it intends to use for that purpose, as well as the commitments adopted to minimize the use of public funds and the potential distortions to competition that might result from those instruments and powers.

(iii) The financial support measures to be implemented by the Credit Institution Deposit Guarantee Fund according to applicable legislation. For these purposes, the FROB, in accordance with the principle of the most efficient use of public funds, may provide financing, on market conditions, to the Credit Institution Deposit Guarantee Fund, to enable it to perform the functions attributed to it.

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(iv) The economic valuation of the institution or of its assets and liabilities.

(v) The liability management exercises to be conducted relating to hybrid capital and subordinated debt instruments.

(vi) The execution deadline.

As in the case of the Restructuring Plan, the authority to approve the Resolution Plan continues to lie with the Bank of Spain, although prior reports are required, as appropriate, from the competent bodies of the autonomous communities where the savings banks and credit cooperatives involved are domiciled.

The approval of the Resolution Plan by the Bank of Spain will mean that the specific transactions used to implement the restructuring, including possible acquisitions of significant holdings and any bylaw amendments made as a consequence of those transactions, will not require any subsequent administrative authorization, within the context of the legislation on credit institutions.

The resolution instruments, which may be adopted individually or jointly, are as follows:

(i) Sale of the institution's business

Sale of the institution's business means both the sale of its shares, units or contributions to capital or of convertible instruments, and sale of all or some of its assets and liabilities to acquirors other than the bridge bank (to which we refer further below).

The price resulting from the transfer will be paid to the institution or to its shareholders after deducting the administrative and any other expenses incurred by the FROB, including the cost of any financial support instruments that it might have adopted, which will be reimbursed previously to the FROB out of the sale price.

The decision to sell the business lies with the FROB, which can carry out the sale in one or more transactions to one or more acquirers. The sale will be made for and on behalf of the shareholders of the institution, but with no need to obtain their consent or that of third parties other than the buyer, and with no need to fulfill the procedural requirements applicable in the area of structural modifications to corporate enterprises. Moreover, the sale must be carried out on market conditions, having regard to the circumstances of each specific case.

The acquiror must be selected through a competitive process with the following characteristics:

(a) It will be transparent, taking into account the circumstances of the specific case and the need to safeguard the stability of the financial system.

(b) It must not favor or discriminate against any of the potential acquirors.

(c) Measures necessary to prevent conflicts of interest will be adopted.

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(d) It will take into consideration the need to apply the resolution instrument as quickly as possible.

(e) Its aims will include maximizing the sale price and minimizing the use of public funds.

Nonetheless, in certain circumstances, if the implementation of a selection process such as that indicated might hinder the achievement of any of the general objectives of RDL 24/2012, and particularly where there is sufficient proof of a serious threat to the stability of the financial system due to the institution's situation, or evidence that the implementation of that process may hinder the effectiveness of the resolution instrument, RDL 24/2012 allows the acquiror/s to be selected without needing to fulfill all of the requirements set forth above. The justification for this extraordinary selection process will be communicated to the European Commission, for the purposes of state aid and competition legislation.

(ii) Transfer of assets or liabilities to a "bridge bank"

A "bridge bank" is a credit institution including as the case may be, the actual institution in resolution, in which the FROB owns a holding, whose purpose is to perform all or some of the activities of the institution in resolution and to manage all or some of its assets and liabilities. This bank must be administered and managed with the aim of selling it, or its assets or liabilities, when the conditions are right and, in any case, within a maximum of five years following its formation or acquisition by the FROB. The sale of the bridge bank or of its assets or liabilities will be made on market conditions through a competitive, transparent and nondiscriminatory process. The proceeds of the sale will belong to the shareholders of the bridge bank, after deducting, where appropriate, the same expenses as in the case of sale to third parties, referred to in section (i) above. The bridge bank must discontinue its activity as a credit institution one year after the FROB divests from it, or after all or most of its assets and liabilities have been transferred to another institution and, in any case, within a maximum of six years from its formation. Where the FROB holds a majority of the capital stock, if it considers that the bridge bank is not operational, it can elect to dissolve and liquidate it, in which case the rules on the sale price will apply to any resulting liquidation dividends in favor of the institutions in resolution whose assets and liabilities have been transferred to the bridge bank.

The bridge bank must fulfill the provisions on organization and discipline applicable to credit institutions and will be subject to the same supervision and penalty regime.

The total value of the liabilities transferred to the bridge bank may not exceed the value of the assets transferred from the institution or from any other source, including those relating to any financial support.

The aforementioned rules on the FROB's freedom to sell one or more bridge banks in one or more transfers, or all or some of the assets and liabilities, also apply.

(iii) Transfer of assets or liabilities to an asset management company.

(iv) Financial support to the acquirors of the business, to the bridge bank or to the asset management company, where necessary to enable the implementation of the aforementioned instruments and to minimize the use of public funds.

1.5 Pre-resolution measures

Before commencing a resolution process, if the Bank of Spain detects well-founded indications that the conditions for resolution may be met, it can order the following measures to reduce or eliminate any obstacles that may emerge in the course of the process:

(i) Require the execution of agreements for the provision of services to ensure the effectiveness of critical services, whether with group institutions or with third parties.

(ii) Require the limitation of the institution's individual and aggregate exposures.

(iii) Impose additional specific or regular reporting requirements, including the keeping of specific, detailed records and logs of the financial transactions and contractual netting agreements referred in Section 2 of Royal Decree-Law 5/2005, of March 11, 2005, on Urgent Reforms for Boosting Productivity and Improving Public Procurement.

(iv) Require the divestment of certain assets.

(v) Require the limitation or cessation of certain activities hitherto carried on or planned for the future.

(vi) Restrict or prevent the development or sale of new lines of business or products.

(vii) Require changes in the legal or operating structure of the institution or consolidable group or subgroup, reducing its complexity so that critical services can be legally and economically separated from other services by adopting resolution measures.

1.6 Specific aspects of the legal situation of institutions in the early measures, restructuring or resolution phase

Through additional provisions, RDL 24/2012 establishes special rules applying to institutions in the early measures, restructuring or resolution phase and aimed at rendering ineffective or exempting fulfillment of certain aspects of the general legislation that would otherwise still apply, distorting the operations of the institutions and progress in those phases as envisaged.

Note in this connection additional provisions five and eleven, which exclude the application to such institutions of certain insolvency rules or principles established by corporate legislation:

(i) Special insolvency rules

Judges are required not to admit petitions for the insolvency of credit institutions that are actually in, or will foreseeably enter into, a restructuring or resolution process.

(ii) Special rules on reorganizations

The application of resolution instruments and the liability management exercises relating to hybrid capital and subordinated instruments conducted by the FROB will be regarded as reorganization measures for the purposes of the provisions of Law 6/2005, of April 22, 2005 on the Reorganization and Winding-Up of Credit Institutions.

(iii) Special rules on payment and settlement systems

The implementation by the FROB or by the Bank of Spain of the measures and powers provided for in RDL 24/2012 will not be regarded as an 'insolvency proceeding' for the purposes of:

(a) Law 41/1999, of November 12, 1999, on Securities Payment and Settlement Systems;

(b) constituting a case of 'enforcement' for the purposes of the provisions of article eleven of Royal Decree-Law 5/2005, of March 11, 2005, on Urgent Reforms for Boosting Productivity and Improving Public Procurement; or

(c) the functioning of the Spanish payment, netting and settlement systems for securities and financial instruments recognized under Law 41/1999, including the systems managed by counterparties, or the irrevocability, firmness and validity of settlement orders or their netting, or the funds, securities or commitments referred to in that Law, or the collateral provided to system managers or participating institutions. It will also not affect exercise of the right of netting or enforcement of the collateral provided to the Bank of Spain, the European Central Bank or any EU national central bank.

(iv) Special corporate law rules

Credit institutions in which the FROB has a position of control, or whose managing body is controlled by the FROB, are released from the following obligations established by the Corporate Enterprises Law ("**LSC**"):

(a) mandatory dissolution by reason of losses that reduce net worth to below one half of the capital stock;

(b) capital reduction by reason of losses that reduce net worth to below two thirds of the capital stock; and,

(c) in general, the obligations on institutions and their directors established in Section 2 of Chapter I of Title X LSC, which regulates dissolution as a result of verification of a statutory or bylaw ground of dissolution, including mandatory dissolution by reason of losses. Other statutory or bylaw grounds of dissolution that are rendered inapplicable are the cessation of business in certain circumstances, deadlock in corporate bodies, the lack of the slightest proportionality between voting and nonvoting shares, and other grounds stipulated in the bylaws.

Note that the LSC will become applicable again as soon as the FROB ceases to hold a position of control or to control the managing body of the institution in question, and when this happens, time in the periods stipulated in the articles, compliance with which was hitherto exempted, will start running again.

2. FINANCIAL SUPPORT INSTRUMENTS [ARTICLES 28 TO 34]

Among the objectives of, and principles governing, the restructuring processes established by RDL 24/2012, a number of instruments are established through which the FROB may provide financial support, unless the Minister for Finance and Public Authorities objects, following the applicable reports.

These instruments take the form of the provision of collateral, the granting of loans or credits, the acquisition of assets or liabilities, or recapitalization.

In general, RDL 24/2012 provides that:

(i) The instruments may be provided for the institution or its group, or for the acquiror of the shares or part of the assets or liabilities of the institution, a bridge bank, or an asset management company.

(ii) In the case of institutions that have already issued convertible instruments subscribed by the FROB, before receiving financial support from the FROB, the FROB may require that the instruments be first converted into shares.

(iii) The financial support from the FROB must not reduce the losses resulting from the restructuring or resolution that should be borne by the shareholders, equity unitholders or members and subordinated creditors.

(iv) As for insolvency legislation, the FROB's claims will be treated as generally preferred claims.

(v) The provision of collateral by the FROB will be subject to such limits as may be established for such purpose in the relevant annual General State Budget Laws.

As regards the recapitalization instruments, RDL 24/2012 establishes, among other matters, that:

(i) The FROB will be able to subscribe or acquire common shares (or contributions to capital stock) and instruments that are convertible into shares.

(ii) As was already provided for in the previous legislation, the instruments subscribed by the FROB will be computable as tier 1 and core capital and will not be subject to the limitations on tier 1 and core capital computability, nor will it be necessary for the instruments to be admitted to trading on an organized secondary market.

(iii) The FROB may advance, in the form of a loan, the subscription or acquisition price for these instruments.

(iv) The subscription, acquisition or conversion price for the recapitalization instruments will be determined by applying to the economic value of the institution such discount as is applicable pursuant to EU competition and state aid legislation, following a report from the Central Government Controller's Office on the extent of compliance with the applicable rules of procedure for its determination.

(v) The FROB may pay the subscription or acquisition price in cash, or use public debt securities, securities issued by the European Financial Stability Facility or by the European Stability Mechanism, or securities issued by the FROB itself, or set off claims held against the institutions.

(vi) The subscription or acquisition of shares will not require any act or resolution (thereby avoiding board and shareholders' meeting resolutions) other than the relevant notification to the Commercial Registry, and will result in the FROB being vested with the relevant voting and other noneconomic rights and becoming a member of the issuer's managing body-

(vii) The FROB will not be subject to limitations such as those on the right to attend shareholders' meetings or vote, or on tier 1 and core capital computability, or in relation to solvency requirements, or to the obligation to make tender offers.

(viii) In order to disapply the shareholders' preemptive right of subscription in capital increases subscribed by the FROB, it will not be necessary to obtain an auditor's report as required by the LSC, or a report on the bases and types of conversion for the issuance of convertible instruments.

Additional provision four establishes indirect tax relief for (i) sale of the institution's business, (ii) transfer of assets or liabilities to a bridge bank, and (iii) transfer of assets or liabilities to an asset management company, provided that they are made as a result of intervention by the FROB. In such cases, any sales of securities made under such transactions will be exempt from transfer tax under the "transfers for consideration" heading. Accordingly, additional provision four expressly establishes that the exception in article 108 of the Securities Market Law (making certain transactions in securities representing the capital of companies whose main asset is real estate or to which contributions of real estate have been made in the previous three years liable to transfer tax under the "transfers for consideration" heading) does not apply to such transactions. The additional provision lastly indicates that the exemption will apply even in cases where the taxpayers are bridge banks, asset management companies or third parties acquiring securities as a result of intervention by the FROB.

3. MANAGEMENT OF HYBRID INSTRUMENTS [ARTICLES 37 TO 49]

As envisaged in point 17 of the MoU, plans for the restructuring and resolution of credit institutions have to include adequate sharing of the costs of those plans among hybrid capital and subordinated debt holders.

Accordingly, restructuring and winding-up plans will include liability management exercises that may affect issues of hybrid instruments, such as preferred participations (*participaciones preferentes*) or convertible bonds, subordinated debt or any other subordinated financing, with or without maturity, obtained by the credit institution affected by the plan, whether directly or through a wholly-owned direct or indirect investee. These exercises must take into account any difference in the hierarchy of claims between issues.

RDL 24/2012 envisages two courses of action: (i) exercises to be conducted by the credit institution itself; and/or (ii) exercises to be conducted by the FROB and having the status of administrative acts. The main difference between the two is that exercises conducted by the FROB will be binding on the credit institutions at which they are aimed (including any investees through which the issue has been made) and on all holders of hybrid capital and subordinated debt instruments.

3.1 Exercises without the intervention of the FROB

Such exercises may take the form of:

(i) Offers for exchange with capital instruments of the credit institution (shares, equity units or capital contributions).

(ii) Offers to buy back securities, whether by direct payment in cash or conditional, according to their present value, on the subscription of shares or equity units in, or capital contributions to, the institution, or on reinvestment of the repurchase price in another banking product.

(iii) A reduction in the nominal value of the debt.

(iv) Early redemption at a value other than nominal value.

Acceptance of these exercises by investors is voluntary and, in particular, the reduction in nominal value and early redemption may require their prior consent, in accordance with the terms and conditions of each issue.

Exercises will take into account the market value, applying any resultant premiums or discounts pursuant to EU state aid legislation, and the substantiation of such market value will require at least one report to be prepared by an independent expert.

The liability management exercises to be conducted by the institution will be posted with sufficient notice before their implementation, as a material event on the institution's website and, if appropriate, published in the official listing bulletins. If it is not necessary to publish a prospectus as a result of conducting an exercise, in accordance with the provisions of securities market legislation, the institution must prepare and make available to the investors affected an informational document containing all of the necessary details so that they can duly assess the advisability of accepting the institution's proposal.

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3.2 Exercises with the intervention of the FROB

Exercises conducted by the FROB will be aimed at ensuring adequate burden sharing, pursuant to EU state aid legislation, in an attempt to minimize the use of public funds. In this connection, hybrid capital and subordinated debt instruments subscribed or acquired by the FROB itself by virtue of RDL 24/2012 will be excluded from this burden sharing, regardless of whether they were subscribed before such exercises were conducted.

The FROB's exercises will be binding on the credit institutions and on the holders of hybrid capital and subordinated debt instruments.

Exercises will respect the hierarchy of claims between issues and, in this connection, it will be necessary for the shareholders, equity unitholders or members of the credit institution to have borne losses to the greatest possible extent.

The FROB's exercises may take the form of:

(i) The deferral, stay, elimination or modification of certain rights, obligations, terms and conditions of any or all of the issues. Modifications may affect:

(a) the payment of interest;

(b) the repayment of principal;

(c) events of default;

(d) the maturity date;

(e) the individual or collective rights of investors;

(f) the right to seek a declaration of default;

(g) the right to demand any payment related to the securities.

(ii) An obligation on the credit institution to buy back the securities in question at such price as may be determined by the FROB.

The FROB may design the repurchase procedure and the price cannot exceed market value, applying any resultant premiums or discounts pursuant to EU state aid legislation. As a minimum price, it is established that investors will receive an amount not lower than that they would have received had the institution been liquidated in an insolvency proceeding.

An obligation may be imposed to reinvest the repurchase price in the institution's capital, or to have the repurchase price paid directly in securities representing the institution's equity.

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(iii) Any other step that the credit institution in question could have taken through any liability management exercise relating to hybrid capital and subordinated debt instruments (as explained in section 3.1 above).

It should be pointed out that in making decisions on these liability management exercises, the FROB will assess their suitability in accordance with the valuation methods set forth in article 43 RDL 24/2012, most notably that established in article 43.i), namely the likelihood of investors accepting the measures described above, also bearing in mind the prevalent profile of the investments in each of the issues to be affected by the exercise.

The exercise will be approved by the FROB, which must send a justificatory report to the Bank of Spain. The implementation of the exercise will be notified by the FROB to the Ministry of the Economy and Competitiveness and will be published as a material event in the Official State Gazette and posted on the FROB website. Where appropriate, it may also be posted on the Spanish National Securities Market Commission ("CNMV") website and published in the relevant official listing bulletins. It will not be necessary to publish a prospectus, pursuant to the provisions of Securities Market Law 24/1988, of July 28, 1988.

Except for the appeals provided for in the procedural rules set forth in articles 69 and 71 RDL 24/2012, holders of the securities in question cannot bring any other proceeding to claim any amount based on a breach of the terms and conditions of the relevant issue if such terms have been affected by an exercise promoted by the FROB and the institution is complying with them, nor can they claim any kind of monetary indemnification from the institution or the FROB for any loss occasioned to them by the implementation of the exercise.

Lastly, it is specified that such exercises cannot be deemed to constitute an event of default or to trigger the early maturity of any of the credit institution's obligations to third parties, and they will not modify, stay or extinguish the relationships between the credit institution and third parties, or confer new rights or impose new obligations on the credit institution vis-à-vis such third parties. In particular, the exercises and their implementation cannot be cited by third parties as an instance in which the hierarchy of claims relating to the institution's debt has been altered.

4. ASSET MANAGEMENT COMPANY ("BAD BANK") [ARTICLES 35 TO 36 AND ADDITIONAL PROVISIONS SEVEN TO TEN]

RDL 24/2012 establishes, on the one hand, the general framework for what is commonly dubbed a "bad bank", leaving certain aspects of the framework to be fleshed out later by regulations, and, on the other hand, defines (in its additional provisions) the specific rules on transfers to Sociedad de Gestión de Activos Procedentes de la Reestructuración Bancaria, S.A., to be formed by the FROB and the possibility of forming separate pools of assets and liabilities at an asset management company.

4.1 General framework

The general framework for transferring assets to the "bad bank" is as follows:

(i) The FROB may compel a credit institution to transfer to an asset management company certain categories of assets that are particularly impaired or whose continued presence on the institution's balance sheet is deemed detrimental to its viability, in order to remove them from the balance sheet and permit their realization to be managed independently.

(ii) The criteria for defining the categories of assets will be determined by regulations depending on, among other factors, the activity to which they are linked, their age on the balance sheet and their accounting classification. Based on these criteria, the Bank of Spain will identify in the case of each institution which assets are transferable.

(iii) The asset management company must be a corporation (*sociedad anónima*); other types of vehicles, such as funds, are ruled out.

(iv) The asset management company is exempted from the limitations relating to capital and reserves required for debt issues.

(v) It is expressly provided that both assets and liabilities can be transferred to the asset management company.

(vi) Assets can be transferred by means of any legal transaction, without requiring the consent of third parties or having to meet the procedural requirements applying to structural modifications to corporate enterprises.

(vii) As regards the valuation of transferred assets, RDL 24/2012 requires that, prior to the transfer, the credit institution make such asset value adjustments as may be determined by regulations, and that the Bank of Spain determine the value of the assets based on the valuation reports commissioned from one or more independent experts using commonly accepted methodologies that must be consistent and adequate so as to provide a realistic estimate of the assets, and must also maximize the use of observable data and limit non-observable data as far as possible. The resulting valuation will replace the independent expert valuation required by the LSC.

(viii) Prior to the transfer, the FROB may require the assets to be grouped under one company, or any other transaction facilitating the transfer.

(ix) The following special rules are established as regards the transfer of assets to the asset management company:

(a) The transferred assets cannot be clawed back through the asset clawback actions provided for in insolvency legislation.

(b) In the case of the transfer of contentious claims, the provisions of article 1535 of the Civil Code will not be applicable.

(c) The transferee will not be required to make a tender offer.

(d) The transfer of assets will not be characterized as a succession to, or an extension of, liability for tax or social security purposes, except as provided for in article 44 of the Revised Workers' Statute Law approved by Legislative Royal Decree 1/1995, of March 24, 1995.

(e) The asset management company will not, if the transfer takes place, be liable for any tax liabilities accruing before the transfer as a result of the ownership, operation or management of the assets by the transferor.

4.2 Sociedad de Gestión de Activos Procedentes de la Reestructuración Bancaria, S.A.

In relation to Sociedad de Gestión de Activos Procedentes de la Reestructuración Bancaria, S.A., RDL 24/2012 establishes as follows:

(i) It must be set up by the FROB within three months following the entry into force of RDL 24/2012.

(ii) Its exclusive purpose will be the holding, direct or indirect management and administration, acquisition and transfer of the assets transferred to it by the credit institutions indicated herein below, and of any others it may acquire in the future.

(iii) It will be set up for a limited period, to be stipulated in its bylaws.

(iv) Its shareholders may be the FROB, the Credit Institution Deposit Guarantee Fund, credit institutions, other entities classified as financial institutions in accordance with article 3.3 of Law 25/2005, of November 24, 2005, regulating private equity firms and their managers, other institutional investors, and other entities established by regulations.

(v) Publicly-held stakes (deemed as the direct or indirect participation by public institutional units, as defined in the European System of Accounts) may not account for 50% or more of the company's capital.

(vi) Regarding the directors, the same conditions of commercial and professional honorability will be required of directors as those required to conduct banking activities and the minimum number of independent directors to be stipulated in the bylaws will be established by regulations.

(vii) The FROB may decide that a newly-formed management company will manage and administer the company's assets, representing it in its ordinary business transactions, so as to use those assets on the best conditions possible. That management company will be subject to the same requirements regarding stakes in the capital and directors.

(viii) The assets to be transferred will be determined by regulations.

(ix) The transfer to this company of the assets regulated by Chapter II of Royal Decree-Law 18/2012, of May 11, 2012, on the reorganization and sale of real estate assets in the financial sector, will comply with the obligations established in article 3.1 of that Royal Decree-Law.

(x) The set of assets to be transferred to Sociedad de Gestión de Activos Procedentes de la Reestructuración Bancaria, S.A. will include the shares or holdings in the asset management companies regulated by Chapter II of Royal Decree-Law 18/2012, provided that such transfer has already taken place on the date on which the transfer to the company should be made.

(xi) The institutions obliged to transfer assets to Sociedad de Gestión de Activos Procedentes de la Reestructuración Bancaria, S.A. will be credit institutions in which, upon the entry into force of RDL 24/2012 (August 31, 2012), the FROB holds a majority stake or which, in the Bank of Spain's opinion and after the independent evaluation of the capital needs and quality of assets at such date, are going to require the commencement of a restructuring or resolution process in accordance with RDL 24/2012.

4.3 Separate pools of assets and liabilities

RDL 24/2012 permits the formation of separate groupings or pools of assets and liabilities at an asset management company. These will be separate asset and liability pools which will not have separate legal personality, but which will be able to hold rights and obligations as regulated in RDL 24/2012 and, secondarily, in the legislation on private equity firms and funds, securitization vehicles and mortgage securitization vehicles.

5. REVIEW OF THE ORGANIZATION AND POWERS OF THE FROB [ARTICLES 50 TO 59]

The Governing Committee of the FROB is made up of members appointed by the Bank of Spain and senior officials of the Ministry of Economy and Competitiveness, with no direct representation of credit institutions as was the case hitherto. It is expressly provided that the Deputy Governor of the Bank of Spain, in his capacity as Chairman of the Executive Committee of the FROB, will appear quarterly before the Economy and Competitiveness Committee of the Lower House of the Spanish Parliament and such other committees as the latter may determine, in order to report on the FROB's activity and, particularly, on any restructuring and resolution measures that it may adopt. To this end, the Governing Committee will issue a written report also on a quarterly basis.

As regards the exercise of the FROB's powers, RDL 24/2012 also expressly reinforces its powers of cooperation and coordination with the other administrative authorities with financial market oversight functions—including, as has been common practice in recent years, the Bank of Spain, the National Securities Market Commission and the Credit Institution Deposit Guarantee Fund, as well as the European Banking Authority, the European Commission and other European and international agencies—providing for the execution of cooperation agreements between them for that purpose.

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6. SPECIAL POWERS OF THE FROB IN THE PROCESSES [ARTICLES 60 TO 68]

Given the broad functions and responsibilities of the FROB, as explained throughout this newsletter and which configure it as a true banking authority, RDL 24/2012 grants the FROB a new series of powers so that it may implement the instruments and measures envisaged in RDL 24/2012.

These powers are corporate and administrative in nature.

6.1 Corporate powers

The FROB will exercise the powers that corporate legislation generally grants:

(i) To the managing body of the institution, where it acquires such status.

(ii) To the shareholders or holders of any securities or financial instruments, where the FROB has subscribed or acquired such securities or instruments.

(iii) To the shareholders' meeting or general assembly in cases where such meeting or assembly hinders or rejects the adoption of the resolutions needed to implement the restructuring or resolution measures, and in cases where, for reasons of special urgency, it is not possible to fulfill the conditions required by current legislation for the valid convening of, and adoption of resolutions by, the shareholders' meeting or general assembly. In such cases, the FROB will be deemed to have all such statutory and bylaw powers as may fall to the shareholders' meeting or general assembly of the institution and which are needed to exercise the functions envisaged in RDL 24/2012 in relation to the restructuring and resolution of credit institutions.

6.2 Administrative powers

In addition to the other powers envisaged throughout RDL 24/2012, the FROB will have the administrative powers enumerated in article 62, including most notably the following:

(i) To determine the economic value of the institution or of its assets and liabilities, for the purposes of implementing the measures and instruments envisaged in the RDL.

(ii) To request from any person any information needed to prepare and adopt or implement a restructuring or resolution measure or instrument.

(iii) To order the transfer of shares, equity units or contributions to the share capital or, in general, instruments representing the capital or its equivalent of the institution or convertible into them, regardless of the holders thereof, as well as of the assets and liabilities of the institution.

(iv) To make capital increases or reductions, and to issue or redeem in whole or in part bonds, equity units and any other securities or financial instruments, as well as to make any bylaw amendments related to these transactions, with authority to disapply the preemptive subscription right in capital increases, including in the cases provided for in article 343 LSC, or to issue equity units.

(v) To determine the instruments through which the restructuring or resolution measures will be implemented, including, in particular, measures entailing structural modifications to the institution and winding-up and liquidation measures.

(vi) To immediately order, following a report from the National Securities Market Commission, the transfer of securities deposited at the institution to another institution authorized to pursue this activity, even if such assets are deposited at third institutions in the name of the institution providing the deposit service.

6.3 Enforceable nature of measures taken by the FROB. Protection against insolvency and vis-à-vis third parties

Notwithstanding the requirements established by RDL 24/2012 and the other formal obligations that may be required by current legislation, the enforceability of the administrative decisions issued by the FROB for the implementation of the instruments provided for in Chapters III (Restructuring) and IV (Resolution) of RDL 24/2012 as well as of the resolutions it may adopt where acting as the shareholders' meeting of the institution (as described in section 6.1 above), will not be subject to the approval, ratification, consent, non-objection or any other formality or requirement, including notification by the shareholders' meeting or general assembly to the institution's shareholders, bondholders, equity unitholders, creditors, debtors, counterparties or any other third parties or authorities, and will be immediately effective upon adoption by the FROB, regardless of whether the formality or requirement in question is imposed by current legislation or is enforceable contractually.

Articles 64 and 65 RDL 24/2012 introduce a number of provisions to avoid cross-defaults by the institution vis-à-vis transactions with third parties (including financial transactions and contractual netting agreements performed in the context of Royal Decree-Law 5/2005) due to any of the FROB's measures.

In addition, the FROB's measures are protected against the possible subsequent insolvency of the institution. In particular, the FROB's measures cannot be the subject of clawback actions pursuant to the provisions of article 71 of Insolvency Law 22/2003, of July 9, 2003, given that RDL 24/2012 constitutes special insolvency legislation, pursuant to its final provision six.

6.4 Urgent measures

For reasons of urgency, the FROB may also:

(i) subject to authorization by the Bank of Spain, provide liquidity to the institution on a transitional basis until the relevant plan is approved;

(ii) employ a procedure to ascertain the economic value of the institution in which reports are not collected from independent experts to implement the restructuring and resolution measures.

6.5 Powers to stay contracts and collateral

(i) The FROB may stay any payment or delivery obligation deriving from any contract entered into by the institution for a maximum period that runs from the publication of exercise of this power until 5 p.m. the following business day, except for deposits opened at the institution.

(ii) Likewise, the FROB may prevent or restrict the enforcement of collateral over any of the institution's assets for the limited period of time that the FROB considers necessary to achieve the resolution objectives.

(iii) The FROB may also stay the right of counterparties to declare the early maturity or termination, or to seek the enforcement or netting, of any rights or obligations relating to the financial transactions and contractual netting agreements referred to in Section 2 of Chapter II of Title I of Royal Decree-Law 5/2005, as a result of the adoption of any restructuring, resolution or early i measure, for a maximum period that runs from the publication of exercise of this power until 5 p.m. the following business day.

(iv) Upon expiration of this period, if the assets or liabilities to which the financial transactions and contractual netting agreements in question relate have been transferred to a third party, the counterparty may not declare the early maturity or termination, or seek the enforcement or netting, of the rights or obligations relating to such transactions and agreements if the assets and liabilities have been transferred in accordance with resolution instruments.

7. PROCEDURAL RULES [ARTICLES 69 TO 72]

RDL 24/2012 contains an entire chapter devoted to the procedural rules applicable to the FROB's actions, distinguishing between actions derived from corporate powers (see section 6.1 above) and those derived from administrative powers (see section 6.2 above).

7.1 Appeals against decisions derived from the FROB's corporate powers

(i) The resolutions or decisions of the FROB can only be challenged in accordance with the rules and procedures established for challenging resolutions of corporate enterprises that are contrary to the law. The period for filing challenges will expire in all cases 15 days after the FROB discloses the action taken (thereby significantly reducing the period of one (1) year provided for in the LSC).

(ii) As regards the FROB's liability as a director of the institutions, the direct action for liability against directors provided for in article 241 of the LSC (i.e. the obligation to indemnify for any damage and loss that its decisions may cause to shareholders, members, bondholders, equity unitholders, creditors or any other third parties that consider their rights and legitimate interests to have been

impaired) may be brought against the FROB. Conversely, the company action for liability against directors cannot be brought with respect to actions taken by the FROB in the context of a restructuring or resolution process.

The filing of an appeal for judicial review, as described below, will stay any corporate proceeding that may have commenced.

7.2 Appeals against decisions in the context of early measures, restructuring and resolution processes

As noted in section 1.1 above, approval by the Bank of Spain of the early measures, restructuring and resolution plans will bring the administrative jurisdiction to an end and may be appealed to the Judicial Review Chamber of the National Appellate Court. In any appeal against the approval of the abovementioned plans, the Bank of Spain and the FROB may be joint defendants, although the proceedings and the potential liability corresponding to each will be confined to each one's specific scope of powers.

7.3 Appeals against liability management exercises relating to hybrid capital and subordinated debt instruments

As noted in section 3.2, holders of securities affected by FROB actions are limited in their ability to appeal against FROB decisions made vis-à-vis liability management exercises relating to hybrid capital and subordinated debt instruments, as they will not be able to commence any other debt recovery proceeding based on the breach of the terms and conditions of the relevant issue if those terms have been affected by an exercise promoted by the FROB and the institution is complying with the contents of such exercise. Nor will they be able to claim for financial compensation of any kind from the institution or the FROB for any damage that any such exercise by the FROB may have caused them. However, for any claims other than the foregoing, article 71 RDL 24/2012 regulates the standing to file appeals in this connection with the Judicial Review Chamber of the National Appellate Court, which will only fall to:

(i) The shareholders or members of the credit institution issuing the hybrid capital and subordinated debt instruments who represent at least 5% of the capital stock and, as the case may be, the wholly-owned institution through which the issue was implemented.

(ii) The holders of securities included within the scope of application of the liability management exercise relating to hybrid capital and subordinated debt instruments.

(iii) The trustee or representative of the syndicate or assembly that brings together the holders of the securities of a given issue affected by the exercise, provided that the trustee or representative is authorized for that purpose by the terms and conditions of the issue and by the rules governing the operation of the syndicate or assembly.

8. RESTRICTIONS ON THE PAY OF DIRECTORS AND EXECUTIVES OF CREDIT INSTITUTIONS RECEIVING PUBLIC AID. ADJUSTMENTS TO PRIOR RULES [FINAL PROVISION NINE]

On this point, the reform addresses two specific aspects of the regulations contained in Royal Decree-Law 2/2012 (**"RDL 2/2012"**), of February 3, 2012, on the Reorganization of the Financial Sector. First, it reduces the ceiling on annual pay which may be received, for any item, by chief executives, managing directors and executives of institutions that receive financial support from the FROB in whose capital the FROB does not have a majority stake. The ceiling now stands at €500,000 (compared with €600,000 previously).

Second, the reform makes a minor amendment to the wording of article 5.6 RDL 2/2012, so that the various pay restrictions established in RDL 2/2012 for directors and executives only apply, in the case of concentration processes between various credit institutions as provided for in article 2 of the RDL and carried out in 2012, to directors and executives who were directors and executives of the institutions that required public financial support or that gave rise thereto, with powers for the Minister for the Economy and Competiveness to modify the pre-established criteria and quantitative limits, in accordance with the provisions of Order ECC/1762/2012, of August 3, 2012, implementing article 5 of Royal Decree-Law 2/2012, of February 3, 2012, on the Reorganization of the Financial Sector, relating to pay at institutions that receive public financial support for their reorganization or restructuring.

It should be noted that the amendment of RDL 2/2012 also affects the timeframes to which the abovementioned concentration processes are subject in order for them to be suitable for the purposes of the legislation. Thus, the period for adoption of the resolution by the shareholders' meeting or the general assembly is extended to October 31, 2012 (previously September 30), while the deadline for concluding the concentration continues to be January 1, 2013.

9. AMENDMENTS TO CREDIT INSTITUTIONS (DISCIPLINE AND CONTROL) LAW 26/1988, OF JULY 29, 1988 [FINAL PROVISION FOUR]

RDL 24/2012 makes the following amendments to Law 26/1988:

(i) The failure to send to the Bank of Spain the action or restructuring plans referred to in RDL 24/2012 is included as a very serious infringement in article 4.p).

(ii) In line with the MoU, the sanctioning powers of the Bank of Spain are strengthened. From January 1, 2013, the Bank of Spain will also have jurisdiction to impose very serious (in addition to minor and serious) penalties, furnishing the related reasons to the Ministry of Economy and Competitiveness.

(iii) The preparation and updating of a general viability plan subject to Bank of Spain approval, the contents of which will be specified by regulations, is included in subarticle 1 bis of article 30 bis, as part of the governance and organizational structure procedures of credit institutions.

(iv) The cases where a credit institution's managing body may be taken over and provisionally replaced are expanded in article 31 to bring it into line with the provisions of RDL 24/2012.

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(v) In line with the MoU, effective January 1, 2013, the Bank of Spain (instead of the Ministry of Economy and Competiveness) will have jurisdiction to authorize the creation of credit institutions, as well as the establishment in Spain of branches of credit institutions not authorized in the EU.

10. AMENDMENT TO LEGISLATIVE ROYAL DECREE 1298/1986, OF JUNE 28, 1986, ON ADAPTING CURRENT LEGISLATION ON CREDIT INSTITUTIONS TO THAT OF THE EUROPEAN COMMUNITIES [FINAL PROVISION TWO]

As from January 1, 2013, the Bank of Spain will be required to consult with the authorities of other EU Member States where penalties are imposed for very serious and serious infringements that also entail a public warning or the disqualification of directors or executives of credit institutions. Until then, the consultation requirement will continue to cover penalties proposed for very serious infringements and penalties for serious infringements that entail the abovementioned circumstances.

11. AMENDMENT TO INSOLVENCY LAW 22/2003, OF JULY 9, 2003 [FINAL PROVISION SIX]

Final provision six amends paragraph k) of subprovision 2 of additional provision two of Insolvency Law 22/2003, of July 9, 2003, to include RDL 24/2012 as special legislation applicable to insolvency proceedings for credit institutions or entities legally treated as credit institutions.

12. CAPITAL REQUIREMENTS [INTERIM PROVISION SIX]

Final provision seven of RDL 24/2012 amends article 1 of Royal Decree-Law 2/2011, of February 18, 2011, on the reinforcement of the financial system, establishing that, as from January 1, 2013, the credit institutions referred to in that article 1 (institutions that can raise deposits from the public, that is, banks, savings banks, and credit cooperatives) must have core capital of 9%.

Transitionally, until January 1, 2013, these institutions must continue to comply with the current provisions of article 1 of Royal Decree-Law 2/2011. That is, until December 31, 2012 they must have core capital of 8%, or of 10% if they have a wholesale funding ratio above 20% or if less than 20% of their capital or voting rights is held by third parties (including shareholders and members).

Lastly, with regard to the changes to capital requirements introduced by RDL 24/2012, of special note is final provision one which amends Law 13/1985, of May 25, 1985, on Investment Ratios, Equity and Reporting Requirements of Financial Intermediaries, and which discourages the placement of preferred participations among retail investors given that, from now on, to be able to count these securities as equity of the institution, the following additional requirements must be met:

(i) Public offerings of these securities must include a tranche of at least 50% of the total issue aimed exclusively at professional clients, who must be at least 50 in number, and the provisions of article 78 bis 3.e) of Securities Market Law 24/1988, of July 28, 1988 cannot apply to this case (i.e. a retail client cannot voluntarily waive this status).

(ii) In the case of issues of preferred participations by institutions that are not listed companies, on the terms of article 495 LSC, the minimum denomination per unit will be €100,000; in the case of all other issues of preferred participations the minimum denomination per unit will be €25,000.

13. STATE GUARANTEES [FINAL PROVISION TEN]

Final provision ten amends Law 2/2012, of June 29, 2012, on the General State Budget for 2012.

First, it introduces an article 51 bis which establishes that the limit of debt obtained by the FROB during the 2012 budget year will be €120,000 million.

Second, it amends the provisions of the Budget with respect to State guarantees. On this point, it should be recalled that the General State Budget Law was already amended in this regard by final provision one of Royal Decree-Law 21/2012, of July 13, 2012, on measures aimed at liquidity for the public authorities and in the financial area. Accordingly, final provision ten:

(i) establishes that the maximum amount of guarantees to be granted by the State in 2012 cannot exceed €258,278,560,000,[1] and

(ii) clarifies the maximum amount of guarantees for economic obligations derived from debt issues carried out by credit institutions resident in Spain with significant activity in the domestic credit market. This amount will be €96,235,000,000,[2] with €55,000,000,000 reserved for the new guarantees to be granted following the entry into force of the Budget Law and which are regulated in article 52 bis.

[1] Compared with the limit of €217,043,560,000 envisaged in the Budget Law.

[2] Compared with the €55,000,000,000 indicated in letter b) of subarticle 52, as amended by Royal Decree-Law 21/2012. Royal Decree-Law 21/2012 also included an article 52 bis with the requirements of the new guarantees which, up to the maximum amount of €55,000,000,000, could be granted by the Central Government until December 15, 2012.